

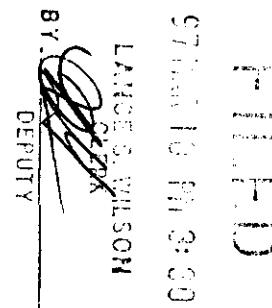
1 GORDON H. DePAOLI
2 State Bar No. 000195
3 DALE E. FERGUSON
4 State Bar No. 004986
5 WOODBURN and WEDGE
6 One East First Street
7 Suite 1600
8 P.O. Box 2311
9 Reno, Nevada 89505
10 Telephone: (702) 688-3000
11 Attorneys for the
12 WALKER RIVER IRRIGATION DISTRICT

13 **IN THE UNITED STATES DISTRICT COURT**

14 **FOR THE DISTRICT OF NEVADA**

15
16
17
18
19
20
21
22

UNITED STATES OF AMERICA,)	IN EQUITY NO. C-125-ECR
Plaintiff,)	SUBFILE NO. C-125-C
WALKER RIVER PAIUTE TRIBE,)	WALKER RIVER IRRIGATION
)	DISTRICT'S OPPOSITION TO
)	MINERAL COUNTY'S MOTION
)	FOR ORDER OF PUBLICATION
Plaintiff-Intervenor,)	
vs.)	
WALKER RIVER IRRIGATION DISTRICT,)	
a corporation, et al.,)	
Defendants.)	



23 **I. INTRODUCTION**

24 On or about February 20, 1997, Mineral County filed a Motion for Order of Publication
25 (the "Publication Motion") and affidavit in support thereof. In part, the Publication Motion states
26 the grounds for the relief it requests as follows:
27

28

1 (a) Mineral County's service of process to water rights' holders on the Walker
2 River was completed by February 1, 1996, pursuant to the Court's Order of
3 November, 1995;

4 (b) Mineral County has, in fact, . . . served substantially all known water rights'
5 holders on the Walker River; and

6 (c) Mineral County believes unascertained and unascertainable parties exist that
7 may hold entitlement or water rights in the Walker River;

8 Publication Motion at 1, 2. On several previous occasions, Mineral County has filed papers with
9 this Court offering these same or similar conclusions, in one form or another, as a basis for relief
10 from service of process in this matter. See Docket Nos. 31, 63, 69, 75, 80. As a result, the
11 Walker River Irrigation District (the "District") has offered argument, authorities and evidence
12 to dispute these erroneous conclusions (See Docket Nos. 39, 67, 77) and the Court has rejected
13 them by denying Mineral County's request to be relieved from further service. See Docket Nos.
14 44, 74, 82.

15 Although Mineral County has failed to offer any new evidence to support these erroneous
16 conclusions, it now places them before the Court once again as a basis for the Court to enter an
17 order allowing service by publication. Because Mineral County's representations concerning the
18 status of service continue to be erroneous and the requirements for service by publication have
19 not been met, the Court must deny the relief requested in the Publication Motion.

20 ////

21 ////

22 ////

23 ////

24 ////

25 ////

26 ////

27 ////

28 ////

1 **II. THE COURT SHOULD DENY MINERAL COUNTY'S REQUEST FOR**
2 **SERVICE BY PUBLICATION BECAUSE IT HAS NOT COMPLETED OR**
3 **SUBSTANTIALLY COMPLETED SERVICE ON ALL CLAIMANTS TO**
4 **THE WATERS OF THE WALKER RIVER AND ITS TRIBUTARIES (THE**
5 **"WALKER RIVER CLAIMANTS") AS ORDERED BY THE COURT ON**
6 **FOUR DIFFERENT OCCASIONS**

7 **A. As of February of 1996, a Review of the Waiver of Service and**
8 **Return of Service Forms filed by Mineral County Clearly**
9 **Established That It Had Not Completed Service On All or**
10 **Substantially All Walker River Claimants**

11 To date, the Court has ordered Mineral County to complete service in this matter on all
12 Walker River Claimants pursuant to Rule 4 of the Federal Rules of Civil Procedure on four
13 separate occasions. See Docket Nos. 19, 44, 48, 74. In February of 1996, Mineral County
14 represented to the Court that it had complied with the Court's orders concerning service and that
15 service was complete with respect to "substantially all known water rights holders on the Walker
16 River." See Notice of Motion, Motion for Relief from Service of Process and Request for
17 Hearing (the "Notice of Motion"), Docket No. 63, at 2.

18 On February 27, 1996, the District filed an opposition to the Notice of Motion (the
19 "District's Opposition") disputing Mineral County's representations that it had complied with the
20 Court's orders and had effected service on substantially all of the Walker River Claimants. See
21 Docket No. 67. Through a review of the Waiver of Service and Return of Service forms (the
22 "Service Forms") filed by Mineral County with the Court, the District attempted to verify the
23 status of Mineral County's service efforts as of the date the Notice of Motion was filed. See
24 District's Opposition at 8 - 10 and Exhibit A attached thereto.

25 The District reviewed the information contained in the Service Forms, including the names
26 of the individuals and entities allegedly served, and compared that information to the names
27 appearing on the list filed by Mineral County on or about June 2, 1995, with this Court under
28 the cover "Proof of Service by Mailing." Id. Through this review, the District determined that

1 of the approximately 1,116 names appearing on the Proof of Service by Mailing List, Mineral
2 County had not served approximately 597 individuals or entities, service may have been
3 accomplished with respect to approximately 398 names and service appeared questionable for
4 approximately 94 other names on the list. Id. at 10.¹

5 On or about March 11, 1996, Mineral County filed a reply to the District's Opposition (the
6 "Reply") that disputed to a certain degree some of the District's conclusions concerning the status
7 of Mineral County's service efforts. See Docket No. 69. Despite Mineral County's attack on the
8 District's service analysis², the admissions contained in the Reply made it clear that Mineral
9 County had failed to complete service of its Intervention Documents in accordance with Rule 4
10 of the Federal Rules of Civil Procedure as ordered by the Court. The Reply provided:

12 Of the 791 persons listed and are common to both lists, 439 have waived service
13 or have actually been served, 11 are dead, 169 have post office boxes and cannot
14 be found for service, and service has been attempted on another 182
unsuccessfully.

15 Mineral County's Reply at 5. Assuming arguendo that these numbers were considered correct,
16 Mineral County itself admitted that approximately 351 individuals and entities had not been
17 served. Through an order of the Court dated March 22, 1996 (the "Denial Order"), the Court
18 denied Mineral County's request to be relieved from further service. See Docket No. 74 at 2.

21 _____
22 ¹The District stated the following with respect to its conclusions concerning the status
of Mineral County's service efforts:

23 In making this determination, the District does not make any representation as
24 to whether service has or has not "actually" been accomplished with respect to
any individual or entity on the list. The District simply attempted to compile in
25 a useable way the information filed with the Court in the form of Waiver of
Service and Return of Service forms.

26 District's Opposition at 10.

27 ²The District's response to the allegations contained in the affidavit attached to the Reply
concerning the District's service analysis is attached hereto as Exhibit A.

1 The Denial Order states that it is Mineral County's obligation "to determine who the proper
2 defendants (i.e., competing water rights holders) are in its proposed action" and that Mineral
3 County "must serve all proper defendants with its motion to intervene and proposed complaint-in-
4 intervention, pursuant to Fed. R. Civ. P. 4." Id.
5

6 B. **During the Past Year, Mineral County has Prosecuted a
7 Frivolous Appeal Before the Ninth Circuit Court of Appeals
8 But has Failed to do Anything Further to Complete Service of
9 Its Intervention Documents As Ordered by the Court**

10 Instead of complying with the Court's directive to complete service, Mineral County chose
11 to appeal the Court's ruling contained in the Denial Order to the Ninth Circuit Court of Appeals.
12 On or about April 5, 1996, Mineral County filed a motion asking the Court to certify its ruling
13 made in the Denial Order for immediate appeal under 28 U.S.C. § 1292(b). Pursuant to minutes
14 of the Court dated May 10, 1996, this Court declined to certify its prior ruling under 28 U.S.C.
15 § 1292(b).

16 Mineral County also appealed from this Court's ruling contained in the Denial Order and
17 filed its opening brief in the Ninth Circuit Court of Appeals on or about June 22, 1996. The
18 District, State of Nevada and the United States Board of Water Commissioners filed Answering
19 Briefs with the Ninth Circuit and oral argument was held on February 10, 1997. In a written
20 decision filed February 12, 1997, the Ninth Circuit dismissed Mineral County's appeal for lack
21 of jurisdiction. See Memorandum of the Ninth Circuit attached hereto as Exhibit B.

22 During Mineral County's appeal to the Ninth Circuit it did nothing further to complete
23 service as ordered by the Court in the Denial Order. This fact is evidenced by Mineral County's
24 failure to file any additional return of service or waiver of service forms during its appeal. See
25 Copies of Docket Sheets for February 1, 1996, through February 28, 1997, attached hereto as
26
27

1 Exhibit C. As a result, the status of Mineral County's service of its Intervention Documents
2 remains as it was in March of 1996 when this Court entered the Denial Order. In the Publication
3 Motion, however, Mineral County once again offers the completely unsupported and erroneous
4 statement that it has complied with the Court's orders and served substantially all Walker River
5 Claimants. See Publication Motion at 2. Until Mineral County complies with the Court's orders
6 by personally serving all Walker River Claimants, the Court should deny its request for service
7 by publication.

9

10 **III. THE COURT CANNOT ORDER SERVICE BY PUBLICATION BECAUSE**
11 **MINERAL COUNTY HAS NOT SATISFIED THE REQUIREMENTS FOR**
12 **SERVICE BY PUBLICATION UNDER NEVADA OR CALIFORNIA LAW**

13 Rule 4 of the Federal Rules of Civil Procedure provides that if a waiver of service has
14 not been obtained and filed, service on individuals, corporations and associations may be effected
15 "pursuant to the law of the state in which the district court is located, or in which service is
16 effected, for the service of a summons upon the defendant in an action brought in the courts of
17 general jurisdiction of the State." F.R.C.P 4(e)(1) and (h)(1).

18 In Nevada, a court may order service by publication if the plaintiff establishes the
19 following:

20 (i) General. When the person on whom service is to be made resides out of the
21 state, or has departed from the state, or cannot, after due diligence, be found
22 within the state, or conceals himself to avoid the service of summons, and the fact
23 shall appear, by affidavit, to the satisfaction of the court or judge thereof, and it
24 shall appear, either by affidavit or by a verified complaint on file, that a cause of
25 action exists against the defendant in respect to whom the service is to be made,
26 and that he is a necessary or proper party to the action, such court or judge may
27 grant an order that the service be made by the publication of summons.

28 . . .

(ii) Property. In any action which relates to, or the subject of which is, real or
personal property in this state in which such person defendant or corporation

1 defendant has or claims a lien or interest, actual or contingent, therein, or in which
2 the relief demanded consists wholly or in part of excluding such person or
3 corporation from any interest therein, and the said defendant resides out of the
4 state or has departed from the state, or cannot after due diligence be found within
5 the state, or conceals himself to avoid the service of summons, the judge or justice
may make an order that the service be made by the publication of summons; said
service by publication shall be made in the same manner as now provided in all
cases of service by publication.

6 N.R.C.P. 4(e)(1)(ii) (emphasis added). The relevant section of the California Code addressing
7 service by publication provides:

8 (a) A summons may be served by publication if upon affidavit it appears to the
9 satisfaction of the court in which the action is pending that the party to be served
10 cannot with reasonable diligence be served in another manner specified in this
article and that:

11 (1) A cause of action exists against the party upon whom service is to be made
12 or he or she is a necessary or proper party to the action; or

13 (2) The party to be served has or claims an interest in real or personal property
14 in this state that is subject to the jurisdiction of the court or the relief demanded
15 in the action consists wholly or in part in excluding the party from any interest in
the property.

16 California Code of Civil Procedure § 415.50 (emphasis added).³

17 To begin with, Mineral County has failed to specifically name the Walker River Claimants
18 it has identified and the status of service with respect to each. In light of this failure, it is
19 impossible for Mineral County to make the required showing, under Nevada or California law,
20 to enable the Court to enter an order permitting service by publication. Mineral County cannot
21 possibly establish that a particular individual resides outside of Nevada, has left Nevada, or
22

23

24

25

26

27

28 ³It is not clear that Mineral County's proposed complaint seeks the type of relief contemplated by the emphasized portion of the Nevada Rule or California Statute. However, the standard of diligence is similar under either the general rule or the emphasized portion.

1 cannot through due diligence be located within Nevada unless and until it identifies that
2 individual.⁴

3 Even if Mineral County's failure to identify unserved Walker River Claimants is
4 overlooked, the Motion for Publication and affidavit attached thereto clearly do not establish that
5 certain Walker River Claimants reside outside of Nevada, have left Nevada, or cannot after the
6 exercise of due diligence be found within Nevada, as required by Nevada law. Likewise, for
7 purposes of the California requirements for service by publication, the Motion for Publication and
8 attached affidavit fail to establish that certain Walker River Claimants: a) cannot with reasonable
9 diligence be served in another manner authorized by California law; b) are necessary parties to
10 Mineral County's proposed action or that a cause of action exists against them; or c) claim an
11 interest in the real property that is subject to this Court's jurisdiction. Under both Nevada and
12 California law there must be a showing of due diligence before service by publication is allowed.
13 Price v. Dunn, 787 P.2d 785, 787-88 (Nev. 1990); Donel, Inc. v. Badalian, 150 Cal.Rptr. 855,
14 858-59 (Cal.App. 1978). Mineral County has completely failed to make this showing.

17 A. **Mineral County's Continued Assertion That Numerous Walker
18 River Claimants are Unascertainable is Incorrect and Therefore
19 No Excuse for Its Failure to Specifically Identify the Walker
20 River Claimants**

21 The Walker River Claimants are not unascertainable as Mineral County continues to
22 contend, however, a great deal of time and effort must be expended to identify them. See Docket
23
24

25 ⁴It is the District's position that the Court should require Mineral County to identify the
26 Walker River Claimants and present the Court with evidence concerning the status of service
27 with respect to each individual Walker River Claimant before it can be relieved of service or
28 proceed with service by publication. Therefore, simultaneously with the filing of this
Opposition, the District has filed a Motion to Require Mineral County to Identify and File a
Report Concerning the Status of Service on Each Individual Walker River Claimant.

1 No. 77. As the proposed plaintiff requesting relief, it is Mineral County that must bear this
2 burden.

3 In order to identify the Walker River Claimants, information from several different
4 sources is useful. Mineral County has apparently relied on records from several different entities,
5 including the District,⁵ as comprising the definitive list of Walker River Claimants. What
6 Mineral County fails to understand, however, is that these records merely contain information
7 specific to the mission of the particular entity maintaining them concerning some of the Walker
8 River Claimants. The records are not, and were never intended to be, a complete and current list
9 of all Walker River Claimants.⁶ At most, the records should be considered as a secondary source
10 of information for Mineral County to utilize in initiating the research necessary to identify all
11 Walker River Claimants.

12 In attempting to identify Walker River Claimants, Mineral County has failed to understand
13 that title to a water right is transferred by deed. Deeds are recorded in the county where the real
14 property to which the water right is appurtenant is located. See Margrave v. Dermody Properties,
15

16 _____
17
18 ⁵In the past, Mineral County has asserted that the District has given it out of date lists
19 of Walker River claimants in an attempt to frustrate its service of process efforts. This is not
20 true. The District is organized under N.R.S. Chapter 539. Its records of land ownership are
21 used for purposes of assessment under that Chapter. Irrigation district records and lists are not
22 used for and are not intended to be used for determining title to a water right. Title to a water
23 right is transferred by deed. Furthermore, until October 1, 1995, there was no requirement
24 under Nevada law that an irrigation district even be informed of a transfer of title to a water
25 right. That changed under the provisions of N.R.S. § 533.384(1)(b). Nevertheless, in the past
26 the District periodically obtained deeds from the Lyon County, Nevada Recorder for purposes
27 of updating its records for assessment purposes. That is an ongoing process and thus the
28 District's records continually evolve as it receives deeds and is able to incorporate the
information in the deeds into its records.

29
30 ⁶For example, for whatever reason, in attempting to identify the Walker River Claimants,
31 Mineral County proceeded under the belief that the District's boundaries encompass the entire
32 Walker River system and as such the District possesses information on all Walker River
33 Claimants. That is not the case and any information the District has concerning Walker River
34 Claimants does not include the entire river system.

1 110 Nev. 824, 828, 878 P.2d 291 (1994); N.R.S. § 533.382; Witherill v. Brehm, 240 P. 529, 532
2 (Cal. App. 1925). Therefore, it is abundantly clear, under Nevada and California law, that the
3 offices of the county recorder of each county on the Walker River system contain the definitive
4 list of Walker River Claimants. The records of other agencies may be useful in conjunction with
5 or to ferret out the information contained at the relevant county recorder's office necessary to
6 identify all Walker River Claimants. They are not, however, the definitive "list" of all Walker
7 River Claimants.

8 The Walker River Claimants are not "unascertainable," however, great time and effort
9 must be expended in conducting research and field investigations in the various counties through
10 which the Walker River flows to identify them. Mineral County refuses to acknowledge this fact
11 by claiming that the costs involved in conducting this research, costs it must incur to satisfy the
12 due process rights of persons whose water rights it seeks to affect, would effectively eliminate
13 its opportunity to intervene.

14 Finally, the Court has impliedly found that the Walker River Claimants are identifiable
15 by ruling that it is Mineral County obligation "to determine who the proper defendants (i.e.,
16 competing water rights holders) are in its proposed action." Denial Order at 2.

17 **IV. THE NOTICE PROVISIONS CONTAINED IN THE NEVADA REVISED
18 STATUTES GOVERNING GENERAL ADJUDICATIONS DO NOT APPLY
19 TO SERVICE OF MINERAL COUNTY'S INTERVENTION DOCUMENTS**

20 Mineral County asserts that N.R.S. §§ 533.090 through 533.320 governing service by
21 publication in general adjudications provide a basis for granting the relief requested in the
22 Publication Motion. Mineral County's attempted intervention in this matter, however, clearly
23 does not involve an initial stream adjudication governed by Nevada water law. The adjudication
24 of the waters of the Walker River ended in April of 1936 with this Court's entry of the Walker
25 River Decree. Therefore, the notice provisions contained in N.R.S. §§ 533.090 through 533.320
26
27
28

1 which contemplate several publications and certified mailings throughout the general adjudication
2 process simply do not apply to Mineral County's service of its Intervention Documents.

3 **V. CONCLUSION**

4 Mineral County has not complied with this Court's orders concerning service of its
5 Intervention Documents or substantially served all Walker River Claimants. In addition, it is
6 impossible for Mineral County to make the required showing under California and Nevada law
7 to allow service by publication until it identifies those Walker River Claimants that have not been
8 served. Mineral County has also failed to offer any evidence, including the exercise of diligence
9 in locating unserved Walker River Claimants, as required by California and Nevada law before
10 service by publication is authorized. Furthermore, the service by publication provisions found
11 in N.R.S. §§ 533.090 through 533.320 do not apply to Mineral County's service of its
12 Intervention Documents. Given these circumstances, the Court must deny the relief requested
13 in the Publication Motion.

14
15 DATED this 10th day of March, 1997.
16
17

18
19 WOODBURN AND WEDGE
20 P.O. Box 2311
Reno, Nevada 89505
21

22 By Dale E. Ferguson
GORDON H. DePAOLI
DALE E. FERGUSON
23 Attorneys for the Walker River
24 Irrigation District
25
26
27
28

Exhibit A

**WALKER RIVER IRRIGATION DISTRICT'S RESPONSES TO AFFIDAVIT
OF KELVIN J. BUCHANAN FILED ON OR ABOUT MARCH 11, 1996**

Copies of returns of service provided to Woodburn and Wedge by The Copy Store and More for Philipp A. Williams, Joni Faith Williams and James Mattice were single pages only and did not include the second pages which indicated the method of service used by Mineral County to effect service on these individuals.

The paralegal who assisted in the preparation of the District's service table inadvertently read the returns of service for Calvin Baker, Carol Harris, Kenneth Orrin, G. L. Osborne and R. E. Osborne as indicating that service on these individuals had been effected by delivery to post office boxes.

Mineral County claims the same error was made in the District's service table with regard to Margaret Tibbals. The District agrees that service was not effected by delivery to a post office box, however, the return of service states that delivery was made to Sherron Cook on behalf of Als Family Trust.

Mineral County claims that James Costa was served. The return of service states that Jim Costa of Annett Ranch was served. The District's service table lists James P. Costa and Annett Ranch. Therefore, the District's table indicates that Jim Costa accepted service on behalf of Annett Ranch, and that no return of service form indicating that James P. Costa was individually served was filed by Mineral County.

Mineral County points out that Greenfield Development was served by personally serving Julie Day. The District initially listed Greenfield Development as not served. A telephone call to the Secretary of State's office revealed that Julie Day is listed as a manager, and the District therefore concedes that a return of service form was filed for Greenfield Development.

Mineral County claims that Snyder Livestock Company Co. was served because Eddie Snyder was personally served. The return of service form indicates that Eddie R. Snyder was served individually by leaving copies with Theresa Snyder. The District's service table lists this as proper service for Eddie R. Snyder, individually. However, nowhere does Mineral County show that Eddie R. Snyder was served on behalf of Snyder Livestock Company, Inc. A telephone call to the Secretary of State's office revealed that Theresa Snyder is not listed as an officer or agent of that company capable of accepting service on its behalf.

Mineral County claims that Smith Ranch Partnership was served since Glenn H. Smith and Barbara Smith were served. The District's service table indicated that Glenn and Barbara Smith were served individually, therefore, the table should have indicated that service forms had been filed for Smith Ranch Partnership.

Mineral County claims that the Milton Bacon Trust was served. The District listed the Milton Bacon Trust as not served because service was effected by leaving copies with a ranch

hand.

Mineral County also disputed the conclusions contained in the service table with respect to service on certain other trusts. Generally, when Mineral County filed a return of service form for a trust, the form indicated that an individual was served on behalf of the trust. Therefore, when a return of service form was filed without any indication that service was being effected on the trust, the District's table indicated that service had not been effected on the trust but instead upon the individual, if applicable.

Service on the following individuals is listed on the District's survey chart as questionable because service was effected by leaving copies with other individuals that may or may not have met the requirements under Rule 4 of the Federal Rules of Civil Procedure: Wilbert Angelo Aiazzi, Batjer Family Trust, Nadine Berrington, Leonard A. Fox Trust, Roger Larson, Eleanor Lommori, Joe Lommori, Gerald Menesini, Rene Menesini and Elvetia Merczak.

Mineral County claims that Alpers Ranch Co., Inc. was served through the owner's son-in-law, Don Jenkins. A telephone call to the Secretary of State's office revealed that Alpers Ranch Co., Inc. is not listed in any way in that office's computer, and the District therefore has no way of knowing if Don Jenkins is authorized to accept service on behalf of Alpers Ranch Co., Inc.

Exhibit B

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FEB 12 1997

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,)
Plaintiff,) No. 96-15885
v.) D.C. No. CV-73-00128-ECR
WALKER RIVER IRRIGATION DISTRICT,)
a corporation; STATE OF NEVADA,) MEMORANDUM*
Defendants-Appellees.)
v.)
WALKER RIVER PAIUTE TRIBE,)
Plaintiff-Intervenor-Appellant.)

Appeal from the United States District Court
for the District of Nevada
Edward C. Reed, Jr., District Judge, Presiding

Argued and Submitted
February 10, 1997--San Francisco, California

Before: GOODWIN, LEAVY and THOMAS, Circuit Judges.

Mineral County, Nevada ("Mineral County" or "the County") appeals the district court's interlocutory order refusing to relieve it from its obligation to serve personally all parties whose interests could be affected by the rights it seeks in an intervention in an action dealing with water rights to the Walker River. We dismiss the appeal for lack of jurisdiction.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

EXHIBIT "B"

The Courts of Appeals generally have jurisdiction to review only "final decisions" of the district courts. 28 U.S.C. § 1291. The collateral order doctrine is a "practical construction" of this final decision rule under which certain orders that do not end the litigation on the merits are appealable on an interlocutory basis. See Digital Equip. Corp. v. Desktop Direct, Inc., 511 U.S. 863, ___, 114 S. Ct. 1992, 1995, 128 L. Ed. 2d 842 (1994). The doctrine applies only to district court decisions that (1) are conclusive, (2) resolve important questions completely separate from the merits, and (3) would render such important questions effectively unreviewable on appeal from final judgment in the underlying action. Alaska v. United States, 64 F.3d 1352, 1354 (9th Cir. 1995) (quoting Digital Equip., 511 U.S. at ___, 114 S. Ct. at 1995-96).

The district court's order requiring Mineral County to serve personally all the claimants to the Walker River satisfies none of these requirements. It is not conclusive because it is incomplete--it did not address Mineral County's suggestion that it be permitted to publish notice of its proposed intervention in accordance with Nevada law in lieu of further service of process, probably because the County never made a formal motion for such relief. See Cohen v. Beneficial Loan Corp., 337 U.S. 541, 546, 69 S. Ct. 1221, 1225-26, 93 L. Ed. 2d 1528 (1949) ("So long as the matter remains open, unfinished or inconclusive, there may be no intrusion by appeal."). With a properly supported motion for service by publication, the district court very well might grant Mineral County the relief it seeks. Indeed, this case could be a

particularly attractive candidate for service by publication at the appropriate time.

Nor is the order sufficiently important to warrant immediate review--it is not "weightier than the societal interests advanced by the ordinary operation of final judgment principles." Digital Equip. Corp., 511 U.S. at ___, 114 S. Ct. at 2002. When service of process is complete and whether a plaintiff should be relieved of further service are questions dependent on the facts in a particular case and subject to the discretion of the district court judge. Under these circumstances, immediate review is inappropriate. See In re Kemble, 776 F.2d 802, 806 (9th Cir. 1985); Sobol v. Heckler Congressional Comm., 709 F.2d 129, 131 (1st Cir. 1983).

Finally, the order is not "effectively unreviewable" absent an immediate appeal. It does not "involve[] an asserted right the legal and practical value of which would be destroyed if it were not vindicated before trial." Lauro Lines s.r.l. v. Chasser, 490 U.S. 495, 498-99, 109 S. Ct. 1976, 1978, 104 L. Ed. 2d 548 (1989) (internal quotation marks omitted). See also Richardson-Merrell, Inc. v. Koller, 472 U.S. 424, 431, 105 S. Ct. 2757, 2761, 86 L. Ed. 2d 340 (1985) (the court must determine that absent an immediate appeal, the asserted right would be "irretrievably lost"). That an erroneous ruling may result in additional litigation expense "is not sufficient to set aside the finality requirement [of § 1291]." Id. at 499, 109 S. Ct. at 1978 (quoting Richardson-Merrell, 472 U.S. at 436, 105 S. Ct. at 2764). Further, the expense of personal service is hardly "irretrievably

"lost" when it can be recovered from any party that refused to waive service without good cause, see Fed. R. Civ. P. 4(d)(2), despite the County's argument that recovering such costs would be "impractical."

Mineral County urges this Court to review the district court's order because compliance with the order is sufficiently burdensome to induce the County to abandon its attempted intervention, spelling the end of this action. This argument is premature, given that the district court has yet to rule on whether to permit publication of notice.

DISMISSED

Exhibit C

District	Off.	Yr.	Docket No. Number	DR	Mo.	Filing Date Day Yr.	J	Nature Suit	R 23	Judge	Tag	Jury Dem	ARB	MDL	Docket	Yr. Number
----------	------	-----	----------------------	----	-----	------------------------	---	----------------	---------	-------	-----	-------------	-----	-----	--------	---------------

Case 3:73-cv-00128-RCJ-WGC Document 94 Filed 03/10/97 Page 21 of 26

CAUSE:

PLAINTIFFS

UNITED STATES OF AMERICA,
PLAINTIFF

WALKER RIVER PAIUTE TRIBE,
INTERVENOR-PLAINTIFF

VS.

WALKER RIVER IRRIGATION DISTRICT, et al.,
DEFENDANTS

DEFENDANTS

RE: MINERAL COUNTY'S MOTION TO INTERVENE

APPEAL FLD 4-24-96 (#)
C/A# 96-15826

ATTORNEYS

SAME AS C-125-ECR

<input type="checkbox"/> CHECK HERE IF CASE WAS FILED IN FORMA PAUPERIS	FILING FEES PAID			STATISTICAL REPORTS PROCESSED
	DATE	RECEIPT NUMBER	C.D. NUMBER	Filing _____ Termination _____ Change _____

UNITED STATES DISTRICT COURT DOCKET

DC 111S (Rev. 7/85)

EXHIBIT "C"

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF		DEFENDANT	CV-N-73-128-ECR DOCKET NO. G-125-G-ECR PAGE 7 OF ____ PAGES
USA		WALKER RIVER IRRIGATION DISTRICT	
DATE	NR.	PROCEEDINGS	
2/1/96	61	CERTIFICATE OF RETURN OF SERVICE re Mineral County's intervention docs purs to ct order (#48) (AT).csd	
---	62	MOTION to dispense w/svc of further pldgs obo Plaintiff-Interpleader, Mineral County (m)(AT).csd 66, 64, 24	
---	63	NOTICE of motion for relief frm svc of process (#62) REQUEST for hearing obo P-Intervenor, Mineral County (m)(AT).csd 64, 66, 24	
2/20/96	64	STIPULATION/ORDER (ECR): ORD WRID's responses to Mineral County's mtn to dispense w/svc of furth pldgs (#62) & notic of mtn/rqst for hrg (#63) due 2/27/96 (cps dist)(AT).csd	
---	65	AFFIDAVIT OF MAILING re stip/ord (#64) obo WRID (m)(AT).csd	
---	66	RESPONSE to Mineral County's mtn to dispense w/svc of pldgs & svc of process (#62) obo State of NV (m)(AT).csd	
2/27/96	67	OPPOSITION to Mineral County's notic of mtn/mtn for relief frm svc of process & rqst for hrg (#63) & mtn to dispense w/svc of pldgs (#62) obo WRID (m)(AT).csd 24	
---	68	AFFIDAVIT OF MAILING re WRID's oppo to mtms (#62 & #63) (#67) obo WRID (AT).csd	
3/11/96	69	REPLY in supprt of Mineral County's notic of mtn, mtn for relief rm svc of process & rqst for hrg (#63) & mtn to dispense w/svc of pldgs (#62) obo Mineral County (m)(AT).csd	
3/12/96	--	SUBD TO ECR: #62, #63, #64, #66, #67, #68, #69. csd	
3/15/96	70	APPLICATION (EX-PARTE) to suspend sched concerning Mineral County's mtn to intervene (#2) obo WRID (m)(AT).csd 70, 73	
---	71	ORDER (ECR): ORD based on applicatn (#70), responses to Mineral County's mtn to intervene (#2), responses to Mineral County's notic of mtn/mtn for relief frm svc of process & rqst for hrg (#63) & mtn to dispense w/svc of pldg (#62) shl be srvd either on date establishd in ord denying mtms (#62 & #63) or 30 days after entry of ord grntng mtms (#62 & #63); Reply shl be srvd 60 days aftr date set for svc of responses to Mineral County's mtn to interverne (#2) (cps dist)(AT).csd	
3/20/96	72	RESPONSE to ex-parate applicatn (#70) to suspend sched concerning Mineral County's mtn to intervene (#2) obo Walker River Paiute Tribe (m)(AT).csd	
3/22/96	73	STATEMENT in response to ex-parate applicatn to suspend sched concerning Mineral County's mtn to intervene (#70) obo USA (m)(AT).csd	

CONT'D TO PG. 8

PLAINTIFF		DEFENDANT	CV-N-73-128-ECR DOCKET NO C-125-C-ECR
USA		WALKER RIVER IRRIGATION DISTRICT	PAGE 8 OF 10 PAGES
DATE	NR.	PROCEEDINGS	
3/22/96	74	MINUTE ORDER (ECR): ORD Mineral County's mtn to dispense w/svc of furth pldgs (#62) is denied (see ord for specs)(cps dist)(AT).csd	(EOD 3/25/96)
4/5/96	75	XOTION to amend interlocutory order (#74) obo Mineral County (m)(AT).csd	74,75
4/22/96	76	OPPOSITION to Mineral County's mtn to amend interlocutory ord (#75) obo State of NV (m)(AT).csd	
4/23/96	77	OPPOSITION to Mineral County's mtn to amend interlocutory ord (#75) obo WRID (m)(AT).csd	
4/24/96	78	NOTICE OF APPEAL frm minute order (#74) obo P-Intervenor, Mineral County (AT).csd	
4/29/96	79	TRANSMITTAL of notice of appeal (#78); DC/CA fees paid; transmittal of cert of record (cps dist)(AT).csd	
5/3/96	80	REPLY in supprt of Mineral County's mtn to amend interlocutory order (#75) obo Mineral County (m)(AT).csd	
5/8/96	--	SUBD TO ECR: #74,#75,#76,#77,#80. csd	
5/10/96	81	STATEMENT of evidenc or proceedings: agreed statmnt as to record on appeal obo Mineral County (m)(AT).csd (cpy to C/A)	
---	82	MINUTE ORDER (ECR): ORD mtn to amend interlocutory ord (#74) obo Mineral County (#75) is denied (see ord for specs)(cps dist)(AT).csd	
5/13/96	--	SUBD TO ECR: #22. csd	
5/16/96	83	CERTIFICATE OF SERVICE re WRID's reply (#80) in supprt of mtn to amend interloc ord (#75) obo WRID (AT).csd	
5/20/96	84	TRANSMITTAL (copy) of notice of appeal (#78) retn'd frm C/A with C/A #96-15885. (AT).csd	
---	85	RESPONSE to Mineral County's statmnt of evidenc or proceedings (#81) obo WRID (m)(AT).csd	
5/29/96	86	SUBSTITUTION OF ATTORNEYS/ORDER (ECR): ORD Bowman & Robinson subd in place/stead of Vargas & Bartlett as atty for U.S. Board of Water Commissioners (cps dist)(AT).csd	
8/7/96	--	SUBD TO ECR: #22,#48. csd	

CONT'D TO PG. 9

PLAINTIFF		DEFENDANT	CV-N-73-128-ECR DOCKET NO C-125-C-ECR PAGE 9 OF PAGES
DATE	NR.	PROCEEDINGS	
1/9/97	87	LETTER to C/A re transmittal of Clk's record in 6 vcls on 1/9/97 by W.Julian (AT).csd	

CERTIFICATE OF MAILING

I hereby certify that I am an employee of the law firm of WOODBURN AND
WEDGE and that on this 10th day of March, 1997, I deposited for mailing at Reno, Nevada a
true and correct copy of the foregoing document, to the following:

Shirley A. Smith
Asst. U.S. Attorney
100 W. Liberty St., #600
Reno, Nevada 89509

Richard R. Greenfield
Dept. of the Interior
Two North Central Ave., #500
Phoenix, AZ 85004

George Benesch
P.O. Box 3498
Reno, NV 89505

Western Nevada Agency
Bureau of Indian Affairs
1677 Hot Springs Road
Carson City, NV 89706

Jim Weishaupt, General Manager
WRID
P.O. Box 820
Yerington, NV 89447

R. Michael Turnipseed, P.E.
Division of Water Resources
State of Nevada
123 West Nye Lane
Carson City, NV 89710

James T. Markle
State Water Resources
Control Board
P.O. Box 100
Sacramento, CA 95814

Scott McElroy
Greene, Meyer & McElroy
1007 Pearl Street
Boulder, CO 80302

John Kramer
Dept. of Water Resources
1416 Ninth Street
Sacramento, CA 95814

David Moser, Esq.
McCutchen, Doyle, Brown &
Enerson
Three Embarcadero Center
San Francisco, CA 94111

Richard E. Olson, Jr.
Claassen and Olson
P.O. Box 2101
Carson City, NV 89702

John P. Lange
Land and Natural Resources
Federal Bldg., Dr. 3607
999 18th Street, Ste. 945
Denver, CO 80202

Ross E. deLipkau
P.O. Box 2790
Reno, Nevada 89505

Roger Johnson
Water Resources Control Board
State of California
P.O. Box 2000
Sacramento, CA 95810

1 Garry Stone
2 290 South Arlington
Reno, NV 89510

3 Linda Bowman
4 Vargas & Bartlett
P.O. Box 281
5 Reno, Nevada 89504

6 Marta Adams
7 Deputy Attorney General
State of Nevada
8 198 So. Carson Street
Carson City, Nevada 89710

10 Jim Spoo
11 Treva J. Hearne
Zeh, Polaha, Spoo & Hearne
12 575 Forest Street
Reno, Nevada 89509

Mary Hackenbracht
Deputy Attorney General
State of California
2101 Webster Street
Oakland, CA 94612-3049

Roger Bezayiff
Water Master
U.S. Board of Water
Commissioners
P.O. Box 853
Yerington, Nevada 89447

Janna G. Hoyt
Janna G. Hoyt

28